

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Chinese Voice of Golden City)	Facility ID No. 194198
DKQLS-LP, Las Vegas, Nevada)	
)	
Application for a Low Power FM)	File No. BLL-20171120AAB
Broadcast Station License)	
)	
Application for Modification to Transmission)	File No. BMLL-20190809AAL
Parameters of Licensed Facility)	

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 2020

Released: November 25, 2020

By the Commission: Commissioner O’Rielly approving in part, concurring in part.

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed by Chinese Voice of Golden City (CVGC).¹ Prior to December 13, 2018, CVGC held a license to operate KQLS-LP, Las Vegas, Nevada (Station).² CVGC seeks review of the Media Bureau’s (Bureau) denial³ of its Petition for Reconsideration (Petition) and determination that CVGC may have made misrepresentations to the Commission.⁴ For the reasons discussed below, we dismiss in part and otherwise deny the AFR.

II. BACKGROUND

2. CVGC applied for a construction permit (Permit) for a new LPFM station at Las Vegas, Nevada, on November 15, 2013.⁵ The Bureau granted the Permit Application on November 20, 2014.⁶ The Permit specified that the geographic coordinates for the Station’s antenna were 36°11’24”N, 115°08’35”W (Permit Site). The construction deadline was November 20, 2017.⁷ On that same date,

¹ Application for Review of Chinese Voice of Golden City, Pleading No. 0000106071 (filed Feb. 14, 2020) (AFR).

² The Station is now identified in our licensing database as DKQLS-LP.

³ *Chinese Voice of Golden City*, File Nos. BLL-20171120AAB, BMLL-20190809AAL, Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020) (*Reconsideration Order*).

⁴ Petition for Reconsideration of Chinese Voice of Golden City, File Nos. BLL-20171120AAB, BMLL-20190809AAL (rec’d Dec. 5, 2019) (Petition). The Petition sought reconsideration of a Bureau letter that determined the Station’s license expired as a matter of law on December 13, 2018, and dismissed CVGC’s application to modify the Station’s license to reflect the fact that the Station was constructed at geographic coordinates different from those specified in the Station’s license (and the construction permit which that license covered), and its request for special temporary authority (STA Request) to operate from the site in use. *Chinese Voice of Golden City*, File Nos. BLL-20171120AAB, BMLL-20190809AAL, Letter Order (MB Nov. 19, 2019) (*Letter Order*).

⁵ File No. BNPL-20131115AGM (Permit Application).

⁶ *Broadcast Actions*, Public Notice, Report No. 48373, at 11 (MB Nov. 25, 2014).

⁷ The Permit originally had an expiration date of November 20, 2016. However, in May 2016, the construction deadline was extended for an additional 18 months.

CVGC timely filed an application (License Application) for a license to cover the facilities authorized in the Permit.⁸ Therein, CVGC certified that it had constructed the Station as authorized. Staff granted the License Application on December 12, 2017.⁹

3. The Enforcement Bureau (EB) subsequently began to investigate the Station's operations, which resulted in CVGC submitting on August 8, 2019 a detailed history of the Station's site changes. This history was provided by Bo Tian (Tian), President of CVGC, in a written statement (Tian Statement).¹⁰ Tian disclosed that: (a) the Station never operated from the Permit Site; (b) the Station was put into operation with mobile facilities at 36°11'21.6"N, 115°08'36.1W (West Owens Avenue Site)—which is 256 feet away from the Permit Site—on or about November 18, 2017; (c) on or about January 20, 2018, CVGC relocated the Station without Commission approval to the rooftop of 1707 East Charleston Boulevard (East Charleston Boulevard Site), “which is 2.27 miles from [the West Owens Avenue Site] but closer to Chinatown;”¹¹ and (d) following EB inspections, including one in April 2019, CVGC stopped operating from the East Charleston Boulevard Site and resumed operations with mobile facilities at the West Owens Avenue Site on or about May 2, 2019.¹²

4. The day after CVGC submitted the Tian Statement to EB, CVGC filed an application (License Modification Application) to modify the Station's license.¹³ CVGC stated that it had “recently determined that the coordinates included in its License Application were in error by 256 feet.”¹⁴ CVGC indicated that the correct coordinates were those for the West Owens Avenue Site.¹⁵ The License Modification Application did not mention that the Station had in fact operated for 15 months from the East Charleston Boulevard Site and not the West Owens Avenue Site. Upon the filing of the License Modification Application, EB informed the Bureau about its investigation and CVGC's submission of the Tian Statement.

5. On November 19, 2019, the Bureau issued the *Letter Order*. The Bureau noted that the Commission's records indicated the Station had been operating from an unauthorized site—the West Owens Avenue Site—since it was initially licensed in 2017. Based on this, the Bureau found that the Station's license had expired pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).¹⁶ The Bureau stated that “the facts of this case do not support reinstatement of the license to promote fairness and equity,”¹⁷ and noted that the Commission has exercised its statutory discretion to reinstate a license that expired pursuant to section 312(g) “only when failure to timely resume broadcasts

⁸ File No. BLL-20171120AAB (License Application).

⁹ *Broadcast Actions*, Public Notice, Report No.49133, at 4 (MB Dec. 15, 2017).

¹⁰ Statement of Bo Tian (Aug. 8, 2019) (Tian Statement).

¹¹ *Id.* at 2, para. 8.

¹² *Id.* at 2, paras. 7-11. Tian indicates that the Station's operations from the West Owens Avenue Site used a “mobile production van” with transmission capability from November 2017 to January 2018, and May-July 2019, and then a tower/antenna mounted on a trailer. *Id.* at 2, paras. 7-11, and Attach. 2.

¹³ File No. BMLL-20190809AAL (License Modification Application). The Bureau granted the License Modification Application on August 16, 2019, but rescinded that grant on August 20, 2019, after EB notified MB of the information obtained during its investigation. See *Broadcast Actions*, Public Notice, Report No. 49555, at 4 (MB Aug. 21, 2019); *Broadcast Applications*, Public Notice, Report No. 29557, at 7 (MB Aug. 23, 2019).

¹⁴ See License Modification Application, Exh. 5. On October 22, 2019, CVGC filed a request for special temporary authority (STA Request) to operate from the West Owens Avenue Site. File No. BSTA-20191022AAR.

¹⁵ License Modification Application, Exh. 5.

¹⁶ 47 U.S.C. § 312(g); see also *Letter Order* at 2.

¹⁷ *Letter Order* at 2.

was for a compelling reason beyond the licensee's control."¹⁸ Finally, the Bureau concluded that "CVGC improperly requested to make the coordinate change on an application for modification of license," in violation of our rules,¹⁹ and therefore dismissed the License Modification Application and the STA Request. The Bureau subsequently modified the Commission's databases to reflect expiration of the Station's license and deleted the Station's call sign.

6. CVGC then filed the Petition asserting that the *Letter Order*: (a) conflicted with section 73.1690(c)(11) of the Rules—which permits a party to correct the coordinates of its facilities in certain circumstances; (b) contradicted Commission precedent; and (c) erred in finding the facts did not support reinstatement of the license to promote fairness and equity.²⁰

7. In its January 15, 2020, *Reconsideration Order*, the Bureau denied the Petition.²¹ Specifically, the Bureau rejected CVGC's argument that the Bureau erred in applying section 73.875(b)(2) of the Rules in a manner that ignored section 73.1690(c)(11), noting that section 73.1690 is not listed as one of the broadcast regulations applicable to LPFM stations.²² The Bureau upheld its finding that the Station's license expired by operation of law,²³ and its rejection of CVGC's assertion that reinstatement of the Station's license was appropriate to "promote equity and fairness."²⁴ The Bureau rejected CVGC's argument that the *Letter Order* deviated from Commission precedent.²⁵ Finally, given the information uncovered during the EB investigation regarding the history of the Station's site changes, the Bureau found that CVGC "may have withheld material information in the License Modification Application and made incorrect statements to the Commission in the Petition when it repeatedly claimed that the Station's actual transmitter site was never changed."²⁶ Thus, the Bureau concluded, "[i]t is possible that CVGC has engaged in misrepresentation and/or lack of candor."²⁷ The Bureau required CVGC and its principals to attach a copy of the *Reconsideration Order* to any Commission broadcast application filed in the next five years.²⁸

8. CVGC then filed the instant AFR.²⁹ Although it does not challenge the validity of the Tian Statement in any respect or attempt to explain the discrepancies between the Tian Statement and

¹⁸ *Letter Order* at 1, n.5.

¹⁹ *Letter Order* at 1, citing 47 CFR § 73.875(b)(2). Section 73.875(b)(2) permits certain changes to LPFM facilities—including "[a]ny change in station geographic coordinates, including coordinate corrections and any move of the antenna to another tower structure located at the same coordinates"—to be made "only after the grant of a construction permit application on FCC Form 318."

²⁰ Petition at 6-8, 8-12, 16-17.

²¹ *Reconsideration Order*, 35 FCC Rcd at 567, para. 1, 572, para. 17.

²² *Id.* at 570, para. 9.

²³ *Id.* at 570, para. 10.

²⁴ *Id.* at 572, para. 15. Further, given its finding that the Station's license expired by operation of law, the Bureau found it unnecessary to consider whether the Station's mobile operations were licensable. *Id.* at 569, n.22, citing *Matinee Media Corp.*, Letter Order, 33 FCC Rcd 6685 (MB 2018). Because we affirm that the Station's license expired pursuant to section 312(g) of the Act, we likewise do not reach this issue.

²⁵ *Reconsideration Order*, 35 FCC Rcd at 570-71, para. 12.

²⁶ 47 CFR § 1.17; Petition at 7 ("The Station was built and is operating at the site at which it was licensed."), 10 ("CVGC was not moving its Station, changing its antenna height, or changing anything about its licensed facilities."), 16 ("CVGC made no changes to its licensed facilities.").

²⁷ *Reconsideration Order*, 35 FCC Rcd at 572, para. 16.

²⁸ *Id.*

²⁹ Shortly after filing the AFR, CVGC filed a Motion for Stay, which urges us to stay the *Reconsideration Order*. Motion for Stay of Chinese Voice of Golden City, Pleading No. 0000106122 (filed Feb. 17, 2020). Silver State then (continued....)

CVGC's Commission applications—namely, the fact that CVGC did not disclose in the License Modification Application its 15 months of unauthorized operations at the East Charleston Boulevard Site—CVGC argues it did not engage in misrepresentation or lack of candor, and neither it nor its principals should be required to attach a copy of the *Reconsideration Order* to broadcast applications filed in the next five years.³⁰ CVGC also asserts that the facts of this case differ significantly from those of *Eagle Broadcasting Group, Ltd. v. FCC (Eagle)*,³¹ and therefore the Bureau's reliance on *Eagle* is misplaced.³² In the alternative, CVGC contends that broadcasting from an unauthorized location is still "broadcasting," and Commission precedents have incorrectly interpreted section 312(g) of the Act. Moreover, CVGC contends that, in upholding the Commission's interpretation, the court in *Eagle* misapplied *Chevron* deference.³³ Further, CVGC reprises its arguments that the Commission "has appropriate authority" to sanction it rather than render "capital punishment" and that the Bureau's action was "arbitrary and capricious."³⁴ Finally, CVGC states that the Station provides "needed programming to the Chinese speaking population within its service area" and maintains the public interest "is not served by terminating that service."³⁵

9. Silver State opposes the AFR.³⁶ Silver State alleges that the AFR is procedurally defective because it lacks the summary required by section 1.49 of the Rules, and relies on questions of fact or law upon which the Bureau has been afforded no opportunity to pass in violation of section 5(c)(5)

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filed an Opposition to Motion to Stay, and CVGC filed a Reply to Opposition to Motion to Stay. Opposition to Motion to Stay of Silver State Broad., LLC, Pleading No. 0000106803 (filed Feb. 28, 2020); Reply to Opposition to Motion to Stay of Chinese Voice of Golden City, Pleading No. 0000107284 (filed Mar. 6, 2020). Because we herein address the merits of the AFR and uphold the *Reconsideration Order*, these pleadings are rendered moot and therefore are dismissed.

³⁰ AFR at 8-11.

³¹ 563 F.3d 543 (D.C. Cir. 2009) (*Eagle*).

³² AFR at 11-12.

³³ *Id.* at 12-16.

³⁴ *Id.* at 3, 21-22.

³⁵ *Id.* at 3, 24.

³⁶ Opposition to Application for Review of Silver State Broad., LLC, Pleading No. 0000106791 (filed Feb. 28, 2020) (Opposition). Silver State is the licensee of K284CW, Winchester, Nevada. The Bureau determined that K284CW's operations were causing interference to the reception of KJUL(FM), Moapa Valley, Nevada, and ordered Silver State to submit a plan to resolve the interference. Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, to Silver State Broad., LLC (dated Dec. 9, 2019) (*Remediation Letter*). In response to the *Remediation Letter*, Silver State filed an application to relocate K284CW from Channel 284 at Winchester to Channel 276 at Las Vegas, and indicated to the Bureau that it proposed to resolve the interference through this relocation. File No. 0000093597 (K284CW Relocation Application); Letter from Dennis J. Kelly, Esq., to Marlene H. Dortch, Secretary, FCC (dated Jan. 8, 2020). The Bureau found Silver State's proposal did not resolve the interference to KJUL(FM) because "Silver State proposed to relocate [K284CW] to an unavailable channel." *Silver State Broad., LLC*, Letter Order, at 9, 10 (MB dated June 29, 2020). It noted that CVGC "was previously licensed to operate on Channel 276 at Las Vegas," and that CVGC had "a pending application for review and motion to stay the Bureau's finding that its license expired." *Id.* at 9. The Bureau concluded that "[u]ntil the Commission acts on these filings, channel 276 is not available to Silver State for its proposed relocation of [K284CW]." *Id.* at 9. The Bureau then ordered K284CW to cease operation immediately, and dismissed the K284CW Relocation Application. *Id.* at 10. Silver State has filed a Petition for Reconsideration of the Bureau's decision. Pleading File No. 0000119052 (Silver State Petition). CVGC has opposed the petition, Pleading File No. 0000120370 (CVGC Opposition), and Silver State has replied. Pleading File No. 0000120543 (Silver State Reply). The Bureau denied the Silver State Petition on October 16, 2020. *Silver State Broad., LLC*, Letter Order (MB Oct. 16, 2020).

of the Act and section 1.115(c) of the Rules.³⁷ Silver State also asserts that the Bureau was “well within its rights to reserve a determination of CVGC’s basic qualifications to be an FCC licensee for a future proceeding,”³⁸ that the Bureau’s finding that the Station’s license had expired was consistent with precedent,³⁹ that the Bureau correctly determined that section 73.1690 does not apply to LPFM stations,⁴⁰ and that the Bureau has not treated CVGC in an arbitrary and capricious manner.⁴¹ Silver State also asserts that, where unauthorized operations implicate section 312(g), the Commission lacks the discretion to impose a sanction other than loss of license, such as a proposed forfeiture.⁴² Lastly, Silver State urges the Commission not to exercise its discretion to reinstate the Station’s license, arguing that such action would not promote equity and fairness.⁴³

10. In reply, CVGC disagrees that the AFR presents new arguments,⁴⁴ and maintains that an honest mistake regarding site coordinates can and should be excused,⁴⁵ that “equity and fairness” require reinstatement of its license,⁴⁶ and that the Commission should reinterpret section 312(g) to “treat as ‘silent’ only those stations that did not transmit from any location for a twelve-month period.”⁴⁷

³⁷ Silver State identifies as new and thus procedurally defective CVGC arguments regarding (1) the applicability of *Eagle* to the expiration of the Station’s license, and (2) *Chevron* deference. Opposition at 3-4.

³⁸ *Id.* at 7-8.

³⁹ *Id.* at 8-9.

⁴⁰ *Id.* at 10-11.

⁴¹ *Id.* at 11.

⁴² *Id.* at 11-12.

⁴³ *Id.* at 12-13. Silver State further argues that, rather than finding the Station’s license had expired by operation of law, the Bureau could have revoked the Station’s operating authority pursuant to section 312(a)(2) of the Act. *Id.* at 4-6 (noting section 312(a)(2) grants the Commission the authority to revoke any station license or construction permit “because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application,” that CVGC certified in the License Application that it had constructed the Station as authorized in the Permit, and that CVGC later admitted the Station was not constructed as authorized). Given that we affirm the Bureau’s finding that the Station’s license expired by operation of law pursuant to section 312(g), we do not reach this argument here.

⁴⁴ Reply to Opposition to Application for Review of Chinese Voice of Golden City, Pleading No. 0000107284, at 5 (filed Mar. 6, 2020) (Reply).

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* at 8-9.

⁴⁷ *Id.* at 7-8. CVGC also asserts Silver State does not have standing to file an opposition to the AFR. *Id.* at 4,5. Because we do not rely on the Opposition in addressing the AFR, we need not resolve this standing issue. See, e.g., *Warren C. Havens*, Order on Reconsideration, 25 FCC Rcd 511, 511 n.3 (2010) (declining to address the issue of whether filer had standing to oppose petition for reconsideration because “we have not relied on the opposition”); *JNE Investments, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 623, 628, para. 13 (2008) (declining to address standing argument where Commission did not rely upon opposition in denying application for review); *Capital Radiotelephone, Co., Inc.* Memorandum Opinion and Order, 16 FCC Rcd 7468, 7471 n.25 (2001) (declining to address argument that filer lacked standing to file opposition because “we have not relied upon [the] opposition and therefore we need not address the standing argument”). In addition, because we do not reach Silver States’ argument that the Bureau could have terminated the Station’s operating authority pursuant to section 312(a)(2) of the Act, see *supra* note 47, we do not consider CVGC’s response to Silver State’s argument that the Bureau could have relied upon that provision. *Id.* at 5.

III. DISCUSSION

11. As an initial matter, we find the AFR complies with the requirements of section 1.49(c) of the Rules.⁴⁸ We reject Silver State's assertion that the AFR lacks the summary required by section 1.49(c).⁴⁹ While CVGC does not explicitly designate any portions of the text as the summary required by section 1.49(c), the AFR does include text serving that purpose.⁵⁰ We further note that, even if we had determined the AFR lacked the required summary, such a defect would not warrant dismissal of the AFR.⁵¹

12. We do, however, find that certain arguments made in the AFR are procedurally defective. Because the Bureau has not had the opportunity to pass on these arguments, we dismiss as procedurally defective those portions of the AFR setting them forth.⁵²

13. On alternative and independent grounds, we reject these arguments and affirm the holding in the *Reconsideration Decision* that the Station's license expired as a matter of law. This is because the station did not operate from an authorized facility from at least January 2018 until May 2019, the time it was operating at the East Charleston Boulevard Site, regardless of its operations at the West Owens Avenue Site. We are unpersuaded by CVGC's argument that "the facts of the *Eagle* case are very different from the instant case."⁵³ It is true that the Bureau communicated with the licensee in *Eagle* in the time period before the license at issue expired by operation of law, and that the Bureau found the licensee in *Eagle* made misrepresentations to the Commission.⁵⁴ However, neither the Commission nor the U.S. Court of Appeals for the D.C. Circuit relied on these facts in determining that the license at issue in *Eagle* had expired by operation of law. Instead, like this case, *Eagle* turned upon the fact that the station had failed to broadcast from an authorized site for more than 12 consecutive months.⁵⁵ As

⁴⁸ 47 CFR § 1.49(c). Section 1.49(c) of the Rules requires that "all pleadings and documents filed with the Commission, the length of which filings . . . exceeds ten pages, shall include, as part of the pleading or document, a summary of the filing, suitably paragraphed, which should be a succinct, but accurate and clear condensation of the substance of the filing."

⁴⁹ Opposition at 2.

⁵⁰ AFR at 2-3 (summarizing the "factors warranting Commission consideration of the questions presented").

⁵¹ See, e.g., *Warren C. Havens*, Memorandum Opinion and Order, 17 FCC Rcd 17527, 17529 n.26 (2002) (declining to dismiss the pleading and admonishing the filer to ensure that future pleadings comply with 47 CFR § 1.49(c)).

⁵² 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c). See also AFR at 11-12 (asserting for the first time in the AFR that the facts of this case differ significantly from those in *Eagle*, and that the Bureau's reliance on *Eagle* is misplaced), 14-16 (arguing for the first time in the AFR that (1) broadcasting from an unauthorized location is still "broadcasting," and (2) that, in upholding the Commission's interpretation, the court in *Eagle* misapplied *Chevron* deference), 21-22 (arguing that it was "arbitrary and capricious" for the Bureau to cancel the Station's license when the Commission allows stations that have been "off the air for many more than twelve months, but not [] twelve consecutive months" to retain their licenses). We do agree with CVGC that there is no procedural bar to its argument asking the Commission to reverse its *Eagle* decision—i.e., that, in its earlier decision, the Commission incorrectly interpreted section 312(g) of the Act. Reply at 5 (explaining that "because CVGC is asking the Commission to reverse a Commission precedent, that argument would have been inappropriate to present to the Bureau," as it "has no authority to reverse Commission precedent"). While this assertion is made for the first time in the AFR, it is presented as a factor justifying Commission review and is permissible under our rules. See 47 CFR § 1.115(b) (requiring applications for review to specify "the factor(s) which warrant Commission consideration of the questions presented" and listing as one such factor that "[t]he action involves application of a precedent or policy which should be overturned or revised").

⁵³ AFR at 11-12.

⁵⁴ *Id.*

⁵⁵ *Eagle*, 563 F.3d at 554 (distinguishing a case cited by the appellant on the ground that the station involved in that case "never ceased transmitting from an authorized location").

discussed herein, we reject CVGC's argument that broadcasting from an unauthorized location should qualify as "broadcasting" for purposes of section 312(g).⁵⁶ We further conclude that CVGC's argument that the court in *Eagle* misapplied *Chevron* deference provides no grounds for reversing the Bureau's decision.⁵⁷ The court in *Eagle* fully analyzed the Commission's construction of section 312(g) under both steps of *Chevron* and concluded it was "eminently reasonable."⁵⁸ In any event, whether or not *Chevron* applies, CVGC has made no persuasive argument for revisiting our long-standing interpretation. And we reject CVGC's argument that it was "arbitrary and capricious" for the Bureau to cancel the Station's license when the Commission allows stations that have been "off the air for many more than twelve months, but not [] twelve consecutive months" to retain their licenses.⁵⁹ The cases cited by CVGC to support this argument do not implicate section 312(g).⁶⁰ We note that the specific language of section 312(g) involving license expiration only applies to "any consecutive 12-month period" and therefore cases involving non-consecutive periods that cumulatively add up to more than twelve months are distinguishable on legal grounds. We further note that the Commission's approach to cases involving extended periods of silence that do not implicate section 312(g) has evolved. Based on the facts presented, the Commission has issued orders designating applications to renew station licenses for hearing to determine whether the licenses should be renewed in light of the stations' failure to operate for most of their license terms.⁶¹ In any event, the Bureau-level decisions cited by CVGC do not bind the Commission.⁶²

14. We next reaffirm our finding that unauthorized transmissions are not sufficient to avoid expiration of a station's license by operation of law and uphold the Bureau's finding here that the Station's license expired by operation of law. As the Commission previously noted: "if read to permit unauthorized operation to avoid license expiration, Section 312(g) would encourage violation of Section 301 and defeat its own purpose of ensuring timely construction and operation of authorized facilities that serve the public."⁶³ We remain convinced that unauthorized transmissions cannot be used to avoid automatic license expiration.⁶⁴

⁵⁶ See *infra* para. 15.

⁵⁷ AFR at 15.

⁵⁸ *Eagle*, 563 F.3d at 551-553.

⁵⁹ AFR at 22.

⁶⁰ See *id.* at 22, n. 30, citing *Roger L. Hoppe II*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 8790 (MB 2016) (station had multiple periods of silence each lasting less than 12 consecutive months); *LKCM Radio Group*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1045 (MB 2014) (station had two periods of silence each lasting less than 12 consecutive months); *WTRI Holdings, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 3236 (MB 2014) (station had two periods of silence each lasting less than 12 consecutive months).

⁶¹ See, e.g., *Family Voice Communications, LLC*, MB Docket No. 18-139, Hearing Designation Order, 33 FCC Rcd 4654 (2018); *Birach Broad. Corp.*, MB Docket No. 18-11, Hearing Designation Order, 33 FCC Rcd 852 (2018); *Radioactive, LLC*, MB Docket No. 17-198, Hearing Designation Order, 32 FCC Rcd 6392 (2017).

⁶² See *Comcast v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (an agency is not bound by the actions of its staff if the agency has not endorsed those actions).

⁶³ *Eagle Broad. Grp., Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd* by *Eagle*, 563 F.3d at 555.

⁶⁴ *Id.* Having made this determination, we reject CVGC's argument that the Bureau decision "is contrary to precedent and is arbitrary and capricious." AFR at 3, 21-22. This argument fails because it is built upon CVGC's assertion that section 312(g) should be inapplicable here, and because the Notices of Violation cited by CVGC in support of this argument refer to unauthorized operations but do not indicate that the unauthorized operations had gone on for 12 consecutive months. *N Content Marketing, LLC*, File No. EB-FIELDNER-19-00029265, Notice of Violation (EB July 25, 2019); *Edgewater Broad., Inc.*, File No. EB-FIELDWR-19-00029012, Notice of Violation (continued....)

15. For the same reason, we reject CVGC's claim that the appropriate sanction in this case is, at most, a monetary forfeiture.⁶⁵ None of the cases that CVGC cites in support of this assertion concern unauthorized operations for more than 12 consecutive months.⁶⁶ As a result, the cases cited by CVGC are inapposite because they involve only rule violations and not license expiration pursuant to section 312(g). As the Bureau noted, the Commission has discretion to shape penalties for rule violations,⁶⁷ but section 312(g) of the Act explicitly provides that the penalty for failure to broadcast for 12 or more consecutive months is license expiration.⁶⁸

16. We affirm the Bureau's decision not to exercise its discretion under section 312(g) in this case to extend or reinstate CVGC's license to promote "equity and fairness."⁶⁹ The Commission has exercised this discretion "only in rare circumstances where a station was silent as the result of natural disasters or other compelling reasons beyond the licensee's control."⁷⁰ As the Bureau noted, CVGC did not allege that the Station's construction at the wrong location was beyond its control.⁷¹ Indeed, CVGC

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(EB June 21, 2019); *FRC of Alabama, LLC*, File No. EB-FIELDSCR-18-000289052, Notice of Violation (EB Dec. 12, 2018); *North Alabama Public Service Broad.*, File No. EB-FIELDSCR-18-00028026, Notice of Violation (EB Dec. 6, 2018); *305 Cmty. Radio, Inc.*, File No. EB-FIELDSCR-18-00027466, Notice of Violation (EB Nov. 16, 2018); *American Multi-Media Syndicate Inc.*, File No. EB-FIELDSCR-18-00026933, Notice of Violation (EB Sept. 18, 2018); *First Unitarian Universal Life Church of Hanford*, File No. EB-FIELDWR-17-00025514, Notice of Violation (EB June 5, 2018).

⁶⁵ We also reject CVGC's argument that the Bureau should have allowed it to correct the Station's coordinates by filing a license modification application. AFR at 20-21. CVGC relies on the fact that Subpart H of Part 73 of the Rules is entitled "Rules Applicable to All Broadcast Stations," and, contained within that Subpart is section 73.1690 of the Rules, which permits the filing of coordinate corrections via a license modification application "where the change is 3 seconds or fewer in latitude and/or 3 seconds or fewer in longitude." *Id.* at 20, citing 47 CFR § 73.1690(c)(11). However, section 73.1001(c)—which falls within Subpart H of Part 73—specifically states: "Certain provisions of this subpart apply to . . . LPFM (subpart G, part 73) . . . where the rules for [that] service[] so provide." 47 CFR § 73.1001(c). And Section 73.801 lists a number of rules set forth in Subpart H as applicable to LPFM stations. 47 CFR § 73.801. Because Section 73.1690 is not included in that list, it does not apply to LPFM stations. Moreover, even if section 73.1690 was applicable to LPFM stations, it would not provide relief to CVGC because the Station's license expired pursuant to section 312(g) when it failed to operate from an authorized site for 12 months.

⁶⁶ AFR at 22-23, citing *San Tan Educational Media*, Order, 34 FCC Rcd 7624 (MB/EB 2019), recon. denied DA 20-580 (MB June 3, 2020) (four months of unauthorized operation); *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302 (MB 2019) (one month of unauthorized operation); *Alabama Media, LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 1913 (MB 2019) (less than a year of unauthorized operation); *Wendolynn Tellez*, Forfeiture Order, 33 FCC Rcd 4594 (MB 2018) (less than a year of unauthorized operation).

⁶⁷ See 47 U.S.C. § 503.

⁶⁸ 47 U.S.C. § 312(g).

⁶⁹ To the extent that CVGC argues that the Commission should read the "equity and fairness" language of section 312(g) more broadly, AFR at 23-24; Reply at 8, this argument is made for the first time in the AFR and is procedurally barred. See 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c). In any event, we find this argument unpersuasive. The language granting the Commission discretion to extend or reinstate station licenses is "phrased as an exception to the general rule that most affected licenses will be forfeited." See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 26 (2008). We remain convinced that the Commission should exercise its discretion "only in rare circumstances." *Christian Broad. of East Point, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 13975, 13976, para. 4 (2015) (*Christian Broad.*). Thus, we reject CVGC's argument that an expansion of the "equity and fairness" exception is warranted in the instant case.

⁷⁰ *Christian Broad.*, 30 FCC Rcd at 13976, para. 4.

⁷¹ *Reconsideration Order*, 35 FCC Rcd at 572, para. 15 ("CVGC . . . moved its transmitter site without prior approval to be closer to Chinatown and then sought to reverse course, in the guise of a coordinate correction, after

(continued....)

admits that it deliberately moved the Station's transmitter to the East Charleston Boulevard Site in order to be closer to Chinatown and operated the Station from that site for more than a year without Commission approval.

17. We affirm the Bureau's finding that CVGC may have "engaged in misrepresentation and/or lack of candor."⁷² When CVGC in November 2017 filed for a license to cover the facilities authorized in the Permit, it certified that the facility "was constructed as authorized in the underlying construction permit" and "in compliance with all special operating conditions, terms, and obligations described in the construction permit," meaning that it constructed at the Permit Site.⁷³ In fact, as CVGC later revealed to EB almost two years later on August 8, 2019 and only after EB had initiated an investigation, the Station did not construct at and had never operated from the Permit Site. In August 2019, CVGC disclosed to EB that it had operated from two different unauthorized sites, one of which was located more than two miles from the Permit Site. One day after revealing these facts to EB, CVGC filed the License Modification Application, which indicated only that the geographic coordinates included in the License Application "were in error by 256 feet" and did not mention that the Station had in fact operated from an unauthorized site over two miles away for a period of 15 months.⁷⁴ We find that these circumstances support the Bureau's conclusion that CVGC may have engaged in misrepresentation and/or lack of candor. We also uphold the Bureau's decision not to pursue a misrepresentation investigation at this point. Consistent with the Bureau's decision, we require CVGC and its principals to include copies of the *Reconsideration Order* as well as this *Memorandum Opinion and Order* with any Commission broadcast applications they file for the next five years. As the Bureau noted, it had cancelled the Station's license and dismissed the License Modification Application and STA Request.⁷⁵ Because CVGC held no other Commission authorizations, there was no immediate need to perform a character assessment. However, should CVGC or any of its principals apply for a Commission authorization in the future, the Bureau recognized that the Commission may need to make a character assessment at that time. We find that this analysis was consistent with precedent and that the requirement was appropriate given the facts at issue in this case.⁷⁶ We also find that five years is an appropriate length of time for this reporting requirement. The main point of the requirement is to ensure that any subsequently-filed applications are not routinely processed.⁷⁷ This, in turn, ensures that the Commission has the opportunity to perform a character assessment.

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an [FCC] inspection revealed the blatant rule violation") and at 571, para. 13 ("[B]ecause the station actually operated for more than a year from a site over two miles away from its licensed site, there is a much larger variance involved here [than a mere siting error], as well as no question about the licensee's decision to operate from an unauthorized location to improve the Station's coverage").

⁷² *Id.* at para. 16.

⁷³ License Application, Section III, Items (2) and (3).

⁷⁴ See *supra* note 17 and associated text.

⁷⁵ *Id.*

⁷⁶ *E-String Wireless, Ltd.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139-40, para. 18 (MB 2016) (admonishing licensee for providing information in FCC application "without having a reasonable basis for believing that information to be correct and requiring licensee to submit a copy of the decision "with every facility application—FCC Form 301, 302 (any version), 349, or 350—filed by [licensee] or its attributable owners . . . , or any entity in which any of them holds an interest that would be within the disclosure standards of our auction rules, for the next five years from the date of this Order").

⁷⁷ We acknowledge that the Commission's Character Policy Statement specifies that "the time period relevant to character inquiries" is ten years. *Character Qualifications in Broad. Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1229, para. 105 (1986). The requirement we impose herein relates to disclosure of the *Reconsideration Order* and this *Memorandum Opinion and Order*. This disclosure requirement ensures that the potential character issues identified in the *Reconsideration Order* and this *Order* do not go overlooked, and is based (continued....)

IV. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED** that the Application for Review filed by Chinese Voice of Golden City on February 14, 2020, **IS DISMISSED IN PART AND OTHERWISE DENIED**, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, and section 1.115(c) and (g) of the Commission's Rules.⁷⁸

19. **IT IS FURTHER ORDERED** that the Motion for Stay filed by Chinese Voice of Golden City on February 17, 2020, **IS DISMISSED**.

20. **IT IS FURTHER ORDERED** that Chinese Voice of Golden City (and each of its principals, Bo Tian, Jinghua Liu, Ai-Chu Chang, and Rongrong Li, as well as any entity in which any of them holds an interest that is attributable under the standard set forth in 47 CFR § 73.3555, or subject to the ownership and control disclosure standard set forth in 47 CFR § 1.2112) **SHALL SUBMIT** a copy of both *Chinese Voice of Golden City*, File Nos. BLL-20171120AAB, BMLL-20190809AAL, Memorandum Opinion and Order, 35 FCC Rcd 567 (MB 2020), and this Memorandum Opinion and Order with every broadcast application—including but not limited to FCC Form 301, 302 (any version), 303-S, 308, 309, 310, 314, 315, 316, 318, 319, 340, 345, 346, 347, 349, 350, or 2100⁷⁹—that any of them submit to the Commission or are a party to, for a period of five years from the date on which this Memorandum Opinion and Order becomes a final Commission order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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on the fact that broadcast licensees generally file at least one—and, often many—applications with the FCC over the course of five years. We note that neither the Bureau's action nor our action herein restricts the Commission from considering CVGC's conduct beyond those five years.

⁷⁸ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c), (g).

⁷⁹ We note that some broadcast applications are now filed via the Commission's Licensing Management System (LMS) and thus are filed via Form 2100 and schedules thereto. The condition imposed herein applies to any broadcast application regardless of whether it is filed via the Commission's Consolidated Database System or LMS.